

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 7008. General Rules of Pleading**

2 ~~(a) APPLICABILITY OF RULE 8 F.R.CIV.P.~~

3 Rule 8 F.R.Civ.P. applies in adversary proceedings. The
4 allegation of jurisdiction required by Rule 8(a) shall also
5 contain a reference to the name, number, and chapter of the
6 case under the Code to which the adversary proceeding
7 relates and to the district and division where the case under
8 the Code is pending. In an adversary proceeding before a
9 bankruptcy judge, the complaint, counterclaim, cross-
10 claim, or third-party complaint shall contain a statement
11 that the proceeding is core or non-core and, if non-core,
12 that the pleader does or does not consent to entry of final
13 orders or judgment by the bankruptcy judge.

14 ~~(b) ATTORNEY'S FEES. A request for an award of~~
15 ~~attorney's fees shall be pleaded as a claim in a complaint,~~
16 ~~cross claim, third party complaint, answer, or~~
17 ~~reply as may be appropriate.~~

Committee Note

The rule is amended to delete subdivision (b), which required a request for attorney's fees always to be pleaded as a claim in an allowed pleading. That requirement, which differed from the practice under the Federal Rules of Civil Procedure, had the potential to serve as a trap for the unwary.

The procedures for seeking an award of attorney's fees are now set out in Rule 7054(b)(2), which makes applicable most of the provisions of Rule 54(d)(2) F.R.Civ.P. As specified by Rule 54(d)(2)(A) and (B) F.R.Civ.P., a claim for attorney's fees must be made by a motion filed no later than 14 days after entry of the judgment unless the governing substantive law requires those fees to be proved at trial as an element of damages. When fees are an element of damages, such as when the terms of a contract provide for the recovery of fees incurred prior to the instant adversary proceeding, the general pleading requirements of this rule still apply.

Changes Made After Publication and Comment

No changes were made after publication and comment.